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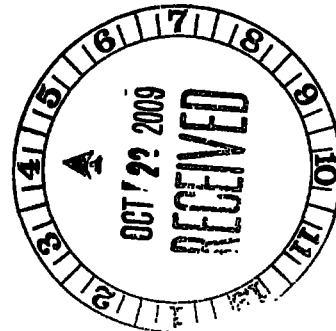
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October 22, 2009



VIA HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 35305, Petition of Arkansas
Electric Cooperative Corporation For A Declaratory Order

Dear Secretary Quinlan:

This letter is submitted on behalf of the Western Coal Traffic League ("WCTL"). WCTL is a voluntary association whose regular membership consists of western coal shippers. Currently, WCTL members pay to transport over 175 million tons of coal annually, with most of this coal originating in the Wyoming Powder River Basin. For the reasons set forth below, WCTL requests that the Board receive public input in the above-referenced proceeding from impacted coal shippers. WCTL also requests leave to intervene. In support hereof, WCTL states as follows:

On October 2, 2009, Arkansas Electric Cooperative Corporation ("AECC") filed a petition asking this Board to institute a proceeding to determine the legality of Items 100 and 101 in BNSF Railway Company's ("BNSF's") Price List 6041-B. Item 100 is entitled "Coal Dust Mitigation Requirements Powder River Basin Joint Line" and Item 101 is entitled "Coal Dust Mitigation Requirements Black Hills Sub-Division" (collectively, "Wyoming Coal Dust Provisions"). AECC also filed a petition asking the Board to stay the proposed November 1, 2009 effective date of the Wyoming Coal Dust Provisions.

WCTL urges the Board to grant AECC's request to institute a declaratory order proceeding to investigate the legality of BNSF's proposed Wyoming Coal Dust Provisions. WCTL also requests that the Board permit all shippers that choose to do so to become parties to this proceeding. This action is appropriate and consistent with Board precedent where, as here, the proceeding involves questions of industry-wide importance. See, e.g., Union Pacific Railroad Co. – Petition for Declaratory Order, STB Finance Docket No. 35219 (STB served Mar. 10, 2009) (STB institutes declaratory order proceeding and seeks public comments on issue of industry-wide importance to shippers of hazardous commodities); Rail Fuel Surcharges, STB Ex Parte No. 661 (STB served Aug. 3, 2006) (STB seeks public comments on the legality of the railroad industry's fuel surcharge practices); Central Power & Light Co. v. Southern Pacific Transportation Co., STB Docket No. 41242 et al., (STB served Aug. 27, 1996) (STB seeks public comments on issues of general industry-wide importance to bottleneck rail shippers).

The issues raised in AECC's declaratory order petition are of significant interest and concern to many coal shippers. The Wyoming Coal Dust Provisions are published in a tariff of general application and, based upon information and belief, BNSF has also issued directives intended to apply the Wyoming Coal Dust Provisions to Union Pacific Railroad Company ("UP") trains utilizing the Powder River Basin Joint Line. Precedents set here could also be applied to coal transportation throughout the country. WCTL submits that the Board will be best served by providing the opportunity for all interested coal shippers to participate in this proceeding, or an appropriate alternative form of proceeding, that addresses the legality of the Wyoming Coal Dust Provisions.¹

AECC has also requested that the Board stay the November 1, 2009 effective date of the Wyoming Coal Dust Provisions. The need for a Board-ordered stay appears to be moot. On October 21, 2009, BNSF informed some WCTL members that it was going to suspend the effective date of the Wyoming Coal Dust Provisions until August 1, 2010. BNSF made similar representations in a filing it submitted to the Board yesterday. If that is the case, there does not appear to be any need for Board action at this time in response to AECC's stay request.

¹ For the reasons set forth above, WCTL also requests that it be permitted to intervene in these proceedings pursuant to 49 C.F.R. §§ 1112.4, 1113.7 and 1117. WCTL appends the requisite filing fee of \$250.00 "for STB adjudicatory services not otherwise covered" (STB fee item (88)).

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Prior to BNSF's announcement, WCTL was particularly concerned about published reports that BNSF planned to impose draconian penalties, including cessation of service, if a shipper failed to comply with the Wyoming Coal Dust Provisions. WCTL had to rely on press reports because BNSF had not provided any public notice of the penalties, if any, it planned to impose if a shipper failed to comply with the Provisions. The Board certainly can and should inform BNSF that the carrier can take no action to enforce the Wyoming Coal Dust Provisions, if they ever do go into effect, until BNSF has provided proper public notice of any proposed penalties for non-compliance, and this Board has had the opportunity to consider the legality of those penalties.

Finally, WCTL notes that it has endeavored to start a dialogue with BNSF and UP concerning coal dust issues (see appended letter), but, to date, each carrier has declined WCTL's invitation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. LeSeur".

John H. LeSeur
An Attorney for
Western Coal Traffic League

Enclosure

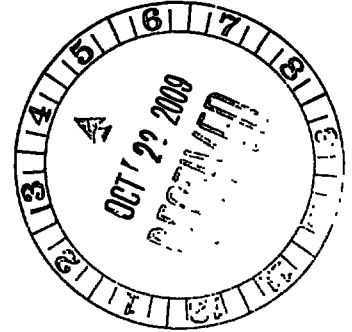
cc: AECC Counsel
BNSF Counsel
UP Counsel



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August 17, 2009

Mr. Stevan B. Bobb
Group Vice-President Coal Marketing
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131-2830

Mr. Douglas J. Glass
Vice President & General Manager Energy
Union Pacific Railroad
1400 Douglas Street
Omaha, NE 68179-1260

Re: Coal Dust

Dear Mr. Bobb and Mr. Glass:

Many members of the Western Coal Traffic League ("WCTL") have received communications from either you, or members of your staffs, concerning what you refer to as "coal dust mitigation" or "coal dust abatement," including communications relating to the BNSF's Item 100 in its Freight Tariff 6041-B ("Coal Dust Mitigation Requirements Powder River Joint Line"). The purpose of this letter is to discuss WCTL's concerns about coal dust issues, based upon the reports we have received to date from our membership.

First, WCTL is concerned that UP and BNSF are addressing coal dust issues in the context of safe loading of rail cars. This approach is simply not correct. Coal has been safely loaded into open top rail cars for over a century without the need to spray coal or take other measures to address coal dust. That continues true today. Clearly, coal can be safely loaded and transported today without coal suppliers changing their current loading practices.

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Second, coal dust mitigation correctly is viewed as a maintenance-of-way issue. Coal dust, along with other factors, may contribute to the fouling of rail ballast. Historically, BNSF, UP and other railroads have addressed track fouling through maintenance procedures designed to clean the ballast. That remains the case today and certainly these standard procedures can continue in the future. Stated another way, coal can be transported in a safe manner, and carriers can continue to maintain their rail track, with no changes in current coal loading and current rail maintenance procedures.

Third, WCTL understands that what BNSF and UP are really interested in is lowering your current maintenance-of-way costs by reducing the amount of dust emissions from the coal cars in high volume rail corridors. The STB agrees:

[C]oal dust fouling of a railroad's right-of-way is a source of maintenance expenses for railroads. Railroads and coal shippers are exploring ways to reduce the amount of coal dust lost in transit, such as altering the shape of car loads or spraying agents on the coal, thereby reducing the amounts necessary to be spent on maintenance.

Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1) at 43 (STB served Oct. 30, 2006). Parenthetically, we note that to date there has been no clear linkage demonstrated between the application of sprayed agents and reduction in maintenance-of-way costs.

Fourth, WCTL members would be happy to work with BNSF and UP to devise methods to reduce your coal dust-related maintenance costs provided that the economic benefits of these reductions are shared with affected coal shippers. We emphasize here that coal shippers are currently paying BNSF and UP extraordinarily profitable rates for your coal services. These rates include full compensation for all rail maintenance-of-way costs. What will not be acceptable for WCTL members is any form of carrier action where coal shippers incur costs for coal dust "mitigation" but the economic benefits, in the form of reduced maintenance costs and increased utilization of your facilities, all flow to BNSF and UP.


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Fifth, WCTL members report that the "Integrated Dust Value" standards referenced in BNSF Tariff 6041-B, and other "mitigation" standards now being considered by BNSF and UP, are the result of work undertaken by a consulting firm (Simpson Weather Associates) at the joint request of BNSF and UP. WCTL members also report that the consultant's work is very controversial and subject to extensive critiques that have been prepared at the request of coal shippers. WCTL urges BNSF and UP not to pursue unilateral actions to address coal dust issues in the absence of a clear consensus between BNSF, UP, and the coal shipping community as to the best procedure (if any) to reduce BNSF's and UP's rail maintenance costs associated with coal dust and how to fairly allocate the associated costs and benefits.

Sixth, as a first step toward reaching a consensus result, WCTL urges BNSF to cancel immediately the coal dust provisions set forth in Freight Tariff 6041-B which call for the unilateral imposition of highly controversial, and unsupported, "Integrated Coal Dust Value" standards. WCTL also urges BNSF and UP to make available to coal shippers, upon request, all of your coal dust study data, procedures, and results, as well as all results of any on-going activities that attempt to measure coal dust emissions from passing trains.

WCTL appreciates the opportunity to present its concerns to both of you and WCTL stands ready to work with BNSF and UP to address coal dust issues in a manner that is mutually beneficial to us all.

Sincerely,


Barry Williams
President